

128955-2

**REMARKS**

Claims 1 and 3-7 are pending in the present Application. Claims 1 and 5 have been amended leaving Claims 1 and 3-7 for consideration upon entry of the present Amendment. Support for the amendment to claim 1 may be found in paragraph 31. No new matter has been introduced by these amendments. Reconsideration and allowance of the claims are respectfully requested in view of the above amendments and the following remarks.

Claim Rejections Under 35 U.S.C. § 112

Claims 1 and 3-7 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants have amended Claim 1 as suggested by the Examiner to maintain language consistency. Applicants apologize for the oversight.

Claim Rejections Under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a)

Claims 1 and 3-7 stand rejected under 35 U.S.C. § 102(b), as allegedly anticipated by U.S. 5,109,068 to Yamasaki et al, or, in the alternative, under 35 U.S.C. § 103(a), as allegedly unpatentable over Yamasaki et al. Applicants respectfully traverse these rejections.

Yamasaki discloses a composition containing 10 to 98% by weight of a styrene-based polymer having syndiotactic configuration with a racemic pentad of 30% or more, and 90-2% by weight of a polyphenylene ether having an intrinsic viscosity of 0.28 dl/g or more at 30°C in chloroform. The composition may optionally include a flame retarder and a rubber-like elastomer. Yamasaki is silent with regard to both the tensile strength of the composition and the molecular weight distribution of the rubber-like elastomer. Yamasaki does not teach or suggest a combination of an atactic styrene-based polymer and a syndiotactic styrene-based polymer as is instantly claimed.

To anticipate a claim, a reference must disclose each and every element of the claim. *Lewmar Marine v. Variant Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Similarly, for an obviousness rejection to be proper, the Examiner must meet the burden of establishing a prima facie case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988).

128955-2

Establishing a prima facie case of obviousness requires that all elements of the invention be disclosed in the prior art. *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970).

Applicants respectfully assert that Yamasaki can neither anticipate nor make obvious the instant claims because Yamasaki does not disclose all elements of the claimed invention, namely the tensile strength of the composition, the molecular weight distribution of the rubber-like elastomer and the combination of an atactic styrene-based polymer and a syndiotactic styrene-based polymer.

Claims 6 and 7 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over Yamasaki et al. in view of U.S. Patent No. 3,383,435 to Cizek. Cizek teaches a composition comprising polyphenylene ether and atactic polystyrene and does not teach or discuss syndiotactic polystyrene. Accordingly Cizek does not teach or suggest a composition comprising both an atactic polystyrene and a syndiotactic polystyrene as is instantly claimed and thus cannot cure the deficiencies of Yamasaki et al. Applicants respectfully request withdrawal of this rejection.

Claims 1 and 3-7 stand rejected under 35 U.S.C. § 102(b), as allegedly anticipated by U.S. 5,391,611 to Funayama et al, or, in the alternative, under 35 U.S.C. § 103(a), as allegedly unpatentable over Funayama et al. Applicants respectfully traverse these rejections.

Funayama et al. discloses a composition containing a styrenic polymer having a high degree of syndiotactic configuration, a rubbery polymer having a product of weight average molecular weight and styrenic monomer unit content of at least 30,000, a polyphenylene ether and a filler. The composition may optionally contain a flame retardant.

Funayama et al. does not teach or disclose including an atactic styrenic polymer in addition to the syndiotactic styrenic polymer as is instantly claimed. Accordingly Funayama et al does not provide adequate basis for a rejection under 35 U.S.C. § 102(b) or 35 U.S.C. § 103(a).

Claims 6 and 7 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over Funayama et al. in view of Cizek. As discussed above Cizek does not teach the combination of an atactic polystyrene and a syndiotactic polystyrene as instantly claimed. Applicants respectfully request withdrawal of this rejection.

128955-2

Claims 1 and 3-7 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over U.S. Patent No. 5,165,990 to Nakano. Applicants respectfully traverse this rejection.

Nakano discloses a stampable sheet containing 20-95 weight percent of a syndiotactic polystyrene, 5-80 weight percent of a fibrous reinforcement material having an average fiber length of at least 1 millimeter, 0.1-50 parts by weight based on 100 parts by weight of syndiotactic polystyrene of a polyphenylene ether/atactic polystyrene, a rubber-like elastomer such as SEBS, and 3-40 parts by weight based on 100 parts by weight of syndiotactic polystyrene and fibrous reinforcement material.

Applicants respectfully submit that the disclosure of Nakano is outside the scope of the pending claims. The pending claims employ the phrase "consisting essentially of" which precludes the inclusion of components that would materially alter the basic and novel characteristics of the composition. Applicants assert that inclusion of the fibrous reinforcement material having an average fiber length of at least 1 millimeter in the disclosed amount would materially alter the basic and novel characteristics of the composition. The inclusion of the fibers would alter the flowability of the composition, particularly when making a wire or cable covering as disclosed in claims 6 and 7. Additionally, the presence of the fibrous reinforcement materials having an average fiber length of at least 1 millimeter would have a significant impact on spark leak occurrence, particularly when the wire or cable covering thickness is less than 1 millimeter. Applicants respectfully assert that the claimed invention is not obvious because Nakano requires the presence of fibrous reinforcement material and does not teach or suggest that it might be absent.

128955-2

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance are requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully submitted,

CANTOR COLBURN LLP

By Patricia S. DeSimone  
Patricia S. DeSimone  
Registration No. 48,137

Date: June 2, 2005  
Telephone (860) 286-2929  
Facsimile (860) 286-0115  
Customer No.: 23413